

### Subpart E—Appeal to the Merit Systems Protection Board

#### § 731.501 Appeal to the Merit Systems Protection Board.

(a) *Appeal to the Merit Systems Protection Board.* An individual who has been found unsuitable for employment may appeal the determination to the Merit Systems Protection Board. If the Board finds that one or more charges are supported by a preponderance of the evidence, it shall affirm the determination. If the Board sustains fewer than all the charges, the Board shall remand the case to OPM or the agency to determine whether the action taken is still appropriate based on the sustained charge(s). This determination of whether the action taken is appropriate shall be final without any further appeal to the Board.

(b) *Appeal procedures.* The procedures for filing an appeal with the Board are found at part 1201 of this chapter.

### Subpart F—Savings Provision

#### § 731.601 Savings provision.

No provision of the regulations in this part shall be applied in such a way as to affect any administrative proceeding pending on January 29, 2001. An administrative proceeding is deemed to be pending from the date of the agency or OPM “notice of proposed action” described in § 731.402.

## PART 732—NATIONAL SECURITY POSITIONS

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AUTHORITY: 5 U.S.C. 3301, 3302, 7312; 50 U.S.C. 403; E.O. 10450, 3 CFR, 1949–1953 Comp., p. 936.

SOURCE: 56 FR 18654, Apr. 23, 1991, unless otherwise noted.

### Subpart A—Scope

#### § 732.101 Purpose.

This part sets forth certain requirements and procedures which each agency shall observe for determining national security positions pursuant to Executive Order 10450—Security Requirements for Government Employment (April 27, 1953), 18 FR 2489, 3 CFR 1949–1953 Comp., p. 936, as amended.

#### § 732.102 Definition and applicability.

(a) For purposes of this part, the term “national security position” includes: (1) Those positions that involve activities of the Government that are concerned with the protection of the nation from foreign aggression or espionage, including development of defense plans or policies, intelligence or counterintelligence activities, and related activities concerned with the preservation of the military strength of the United States; and (2) positions that require regular use of, or access to, classified information. Procedures and guidance provided in FPM chapter 732 and related issuances apply.

(b) The requirements of this part apply to competitive service positions, and to Senior Executive Service positions filled by career appointment, within the Executive Branch, and agencies may apply them to excepted service positions within the Executive Branch.

### Subpart B—Designation and Investigative Requirements

#### § 732.201 Sensitivity level designations and investigative requirements.

(a) For purposes of this part, the head of each agency shall designate, or cause to be designated, any position within the department or agency the occupant of which could bring about, by virtue of the nature of the position, a material adverse effect on the national security as a sensitive position